

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2001-447-C - ORDER NO. 2002-90
FEBRUARY 6, 2002

IN RE: Application of Ernest Communications, Inc.)
for a Certificate of Public Convenience and)
Necessity to Provide Resold Local Exchange)
Telecommunications Services within the State)
of South Carolina.)

ORDER 

This matter comes before the Public Service Commission of South Carolina (the “Commission”) by way of the Application of Ernest Communications, Inc. (“Ernest”) or the “Company”) requesting a Certificate of Public Convenience and Necessity to provide competitive local exchange telecommunications services in the State of South Carolina. The Company’s Application was filed pursuant to S.C. Code Ann. §58-9-280 (B) (Supp. 2000).

By letter, the Commission’s Executive Director instructed Ernest to publish, one time, a prepared Notice of Filing in newspapers of general circulation in the areas affected by the Application. The purpose of the proposed Notice of Filing was to inform interested parties of the manner and time in which to file the appropriate pleadings for participation in the proceedings. Ernest complied with this instruction and provided the Commission with proof of publication of the Notice of Filing. A Petition to Intervene was received from the South Carolina Telephone Coalition (“SCTC”) on November 30, 2001.

On January 15, 2002, counsel for SCTC filed with the Commission a Stipulation in which Ernest stipulated that it would seek authority in non-rural local exchange (“LEC”) service areas of South Carolina and that it would not provide any local service to any customer located in a rural incumbent's service area, unless and until Ernest provided written notice of its intent prior to the date of the intended service. Ernest also stipulated that it was not asking the Commission to make a finding at this time regarding whether competition is in the public interest for rural areas. Ernest agreed to abide by all State and Federal laws and to participate to the extent that it may be required to do so by the Commission in support of universally available telephone service at affordable rates. The SCTC withdrew its opposition to the granting of a statewide Certificate of Public Convenience and Necessity to Ernest to provide local services provided the conditions contained in the Stipulation are met. The Stipulation was entered into the evidence of the hearing, and the Staff requested that the Stipulation be approved by the Commission. The Stipulation is approved and attached as Order Exhibit 1.

A hearing was commenced on January 23, 2002, at 2:30 p.m., in the Commission's Hearing Room. The Honorable William Saunders, Chairman, presided. Ernest was represented by Randy Lowell, Esquire and Reginald Lloyd, Esquire. Jocelyn Boyd, Staff Counsel, represented the Commission Staff. J. Paul Masters, President of Ernest, appeared and testified on behalf of the Company.

Masters, as President of the Company, assists with the strategic direction of the Company, evaluates, negotiates, and enforces interconnection agreements and other contracts. Additionally, he promotes the financial health of the Company, maintains the

Company's accounting and legal records, and evaluates strategic plans for financial prudence. Masters is also responsible for all aspects of Ernest's regulatory affairs, which includes monitoring the Company's state certification efforts, and compliance with federal, state and local laws and regulations.

Ernest seeks to resell local exchange telecommunications services within the State of South Carolina, utilizing an unbundled network element platform. The Company seeks to offer resold local exchange telecommunications services to business customers. According to the testimony, the Company will offer customers a competitive alternative to the local exchange telephone companies operating in Ernest's proposed service territory for a full range of telecommunications services. The services to be offered by Ernest will include standard business lines, pay telephone access lines, and ancillary services.

Ernest has been granted authority to provide local exchange telecommunications services in the states of Alabama, Arizona, California, Colorado, Florida, Georgia, Indiana, Kentucky, Louisiana, Missouri, New Jersey, New York, North Carolina, Oregon, Pennsylvania, Tennessee, Texas, Washington, Oklahoma and Mississippi. The record reveals that Ernest currently has applications pending for authority to provide local exchange telecommunications services in the states of Michigan and Ohio.

Masters presented testimony on Ernest's technical, managerial and financial resources to provide telecommunications services in South Carolina. Regarding the Company's technical resources to provide telecommunications services, service will be provided twenty-four hours per day, seven days per week. Furthermore, Ernest will

provide service to its customers using a UNE-P strategy, and will lease switch capacity and unbundled local loops from incumbent telephone companies. Additionally, the Company will provide local exchange services on a resale basis only. Ernest has executed an interconnection agreement with BellSouth.

Customer inquiries will be handled by representatives at the Company's Customer Service Center, which is staffed twenty-four hours per day, seven days per week. The toll-free number for Ernest's Customer Service Center is (800) 456-8353—this toll-free number will be printed on customer bills. Maintenance and repair of facilities leased from other carriers is performed by the technical personnel of the Company's underlying carriers, subject to the provisions of their respective tariffs.

Regarding the Company's managerial resources to offer telecommunications services in South Carolina, Masters testified that Ernest has the managerial capabilities to provide customers in the State of South Carolina with high-quality local exchange telecommunications services. According to the testimony, the Company's management team is highly-skilled, having acquired considerable experience in the telecommunications industry. Mr. Masters has numerous years of experience in the telecommunications industry, primarily in Ernest's Sales and Marketing Division. According to the record, since the time that Mr. Masters was promoted to President at Ernest in March 2000, he has increased the Company's line count and revenue by more than 400%. Joseph J. Ernest is the Company's Chief Executive Officer. The record reveals that Mr. Ernest has fifteen years of wide-ranging experience in the telecommunications industry. Further, the record indicates that Mr. Ernest started the

Company in 1984 to capitalize on the deregulation of pay telephones created by the divestiture of AT&T. Mr. Ernest has also served as President and Chief Executive Officer of Ernest since its inception in May 1998.

Masters also testified that Ernest is financially qualified to provide resold local exchange telecommunications services in South Carolina. According to the record, Ernest has access to the financing and capital necessary to conduct its telecommunications operations. The Company maintains its books and records in accordance with Generally Accepted Accounting Principles (GAAP). The Company requests waiver of any requirement which would require Ernest to maintain its records according to the Uniform System of Accounts (USOA).

Ernest also requests permission to maintain its corporate books and records at its corporate headquarters in Norcross, Georgia. According to the record, the Company will permit Commission inspections of its books and records upon request, and will pay for all costs associated with such inspection by the Commission. Moreover, Ernest requests a waiver of the requirement that it publish local exchange directories. The Company will make arrangements with BellSouth, its underlying carrier, for the names of Ernest's customers to be included in the directories published by BellSouth. Additionally, the Company will arrange with BellSouth to have Ernest's customer service telephone number included in the directories published by BellSouth; these directories will be distributed to Ernest's customers in the State of South Carolina. Further, Ernest requests a waiver of any reporting requirements which, although applicable to incumbent local exchange carriers such as BellSouth, are not applicable to the Company because such

requirements (1) are not consistent with the demands of the competitive marketplace, and/or (2) constitute an undue burden on a competitive provider, thereby requiring an inefficient allocation of its limited resources.

The record further reveals that the services provided by Ernest will meet the service standards that the Commission has adopted or may adopt. Moreover, Masters testified that Ernest's provision of local exchange telecommunications service to customers using UNE-P will provide a competitive alternative to the public and it will promote, through competition, the efficient use of the local exchange telecommunications network. Finally, Mr. Masters, on behalf of the Company, agreed to comply with all Orders, regulations, and requirements of the Commission.

Upon consideration of the application and the record from the hearing, the Commission makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. Ernest is organized as a corporation organized under the laws of the State of Georgia and has received authorization from the Secretary of State of South Carolina to operate as a foreign corporation in the State of South Carolina.

2. Ernest wishes to provide local exchange services within the State of South Carolina.

3. The Commission finds that Ernest possesses the technical, financial, and managerial resources sufficient to provide the service requested. S.C. Code Ann. §58-9-280(B)(1) (Supp. 2000).

4. The Commission finds that Ernest's "provision of service will not adversely impact the availability of affordable local exchange service." S.C. Code Ann. §58-9-280(B)(3) (Supp. 2000).

5. The Commission finds that Ernest will support universally available telephone service at affordable rates. S.C. Code Ann. §58-9-280(B)(4) (Supp. 2000).

6. The Commission finds that Ernest will provide services which will meet the service standards of the Commission. S.C. Code Ann. §58-9-280(B)(2) (Supp. 2000).

7. The Commission finds that the provision of local exchange service by Ernest "does not otherwise adversely impact the public interest." S.C. Code Ann. §58-9-280(B)(5) (Supp. 2000).

CONCLUSIONS OF LAW

1. Based on the above findings of fact, the Commission determines that a Certificate of Public Convenience and Necessity should be granted to Ernest to provide competitive intrastate local exchange services within the State of South Carolina. The terms of the Stipulation between Ernest and the SCTC (attached hereto as Exhibit 1) are approved and adopted as a portion of this Order. Any proposal to provide local services to rural service areas is subject to the terms of the Stipulation. In accordance with the Stipulation, Ernest may not provide any local service to a customer located in a rural incumbent LEC's service area, unless or until Ernest provides such rural incumbent LEC and the Commission, written notice of its intent to do so at least thirty (30) days prior to the date of the intended service. During such notice period, the rural incumbent LEC will have the opportunity to petition the Commission to exercise all rights afforded it under

Federal and State law. The Commission may suspend the intended date for service in rural LEC territory for ninety (90) days while it conducts any proceeding incident to the Petition or upon the Commission's own Motion, provided that the Commission can further suspend the implementation date upon a showing of good cause. It is specifically provided that all rights under Federal and State law are reserved to the rural incumbent LECs, and this Order in no way suspends or adversely affects such rights, including any exemptions, suspensions, or modifications as they may be entitled. If, after notice from Ernest that it intends to serve a customer located in a rural incumbent LEC's service area, and the Commission receives a Petition from the rural incumbent LEC to exercise its rights under Federal or State law, or if the Commission institutes a proceeding of its own, no service may be provided by Ernest in a rural incumbent LEC's service area pursuant to this Order without prior and further Commission approval.

2. Ernest shall resell the services of only those companies authorized to provide telecommunications services in South Carolina by this Commission.

3. Ernest shall conduct its business in compliance with Commission decisions and Orders, both past and future, including but not limited to, any and all Commission decisions which may be rendered in Docket No. 96-018-C regarding local competition.

4. Ernest shall file annual financial information in the form of annual reports and gross receipt reports as required by the Commission. The annual report and the gross receipt report will necessitate the filing of intrastate information. Therefore, Ernest shall keep such financial records on an intrastate basis as needed to comply with the annual

report and gross receipt filings. The form the Company shall use to file annual financial information with the Commission can be found at the Commission's web site at www.psc.state.sc.us/forms. This form is entitled "Annual Report for Competitive Local Exchange Carriers". Additionally, pursuant to the Commission's regulations, the Company shall file a CLEC Service Quality Quarterly Report with the Commission. The proper form for this report is Form #110 and can be found at www.psc.state.sc.us/forms/default.htm. Gross receipts forms are due to be filed with the Commission no later than October first.

5. Title 23, Chapter 47, South Carolina Code of Laws Ann., governs the establishment and implementation of a "Public Safety Communications Center," which is more commonly known as a "911 system" or "911 service." Services available through a 911 system include law enforcement, fire, and emergency medical services. In recognition of the necessity of quality 911 services being provided to the citizens of South Carolina, the Commission hereby instructs Ernest to contact the appropriate authorities regarding 911 service in the counties and cities where the Company will be operating. Contact with the appropriate 911 service authorities is to be made before beginning telephone service in South Carolina. Accompanying this Order is an information packet from the South Carolina Chapter of the National Emergency Number Association ("SC NENA") with contact information and sample forms. The Company may also obtain information by contacting the E911 Coordinator at the Office of Information Resources of the South Carolina Budget and Control Board. By this Order and prior to providing services within South Carolina, Ernest shall contact the 911

Coordinator in each county, as well as the 911 Coordinator in each city where the city has its own 911 system, and shall provide information regarding the Company's operations as required by the 911 system.

6. The Company shall, in compliance with Commission regulations, designate and maintain authorized utility representatives who are prepared to discuss, on a regulatory level, customer relations (complaint) matters, engineering operations, tests and repairs. In addition, the Company shall provide to the Commission in writing the names of the authorized representatives to be contacted in connection with general management duties as well as emergencies which occur during non-office hours.

Ernest shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. The form the Company shall use to file this authorized utility representative information can be found at the Commission's website at www.psc.state.sc.us/forms. This form is entitled "Authorized Utility Representative Information." Further, the Company shall promptly notify the Commission in writing if the representatives are replaced. Ernest shall also file with the Commission a copy of its general Bill Form as required by S.C. Code Regs. 103-612.2 and 103-622 (1976 and Supp. 2000).

7. Each telecommunications company certified in South Carolina is required to file annually the Intrastate State Universal Service Fund (USF) worksheet. This worksheet provides the Commission Staff information required to determine each telecommunications company's liability to the State USF fund. Ernest shall file annually

the Intrastate State Universal Service Fund (USF) worksheet due August 15 for calendar and fiscal year ending companies.

8. Ernest requested waivers from certain Commission regulations and requirements. Specifically, Ernest requested waivers from (1) the requirement found in Rule 103-631 to publish and distribute local exchange directories, (2) any reporting requirements which, although applicable to incumbent local exchange carriers such as BellSouth, are not applicable to Ernest because such requirements (1) are not consistent with the demands of the competitive marketplace and/or (2) constitute an undue burden on a competitive provider, thereby requiring an inefficient allocation of its limited resources; and (3) the requirement found in Rule 103-610 that all books and records be kept within the State of South Carolina. The Company also requested permission to be exempt from any requirement to maintain books and records in compliance with the USOA. The Commission grants the request for waiver from the requirement to publish directories as Ernest has indicated that it will arrange with BellSouth, its underlying carrier, for the names of Ernest's customers to be included in the directories published by BellSouth. Ernest will also arrange with BellSouth to have Ernest's customer service telephone number included in the directories published by BellSouth. The Commission grants the Company's request to keep its books and records at its headquarters in Norcross, Georgia. Further, the Commission grants Ernest's request that it be allowed to keep its books and records in accordance with GAAP rather than the USOA. We deny the Company's request for a waiver of the Commission's reporting requirements. Reporting requirements are necessary for this Commission to monitor issues such as

quality of service to ensure that telecommunications carriers are operating in compliance with the Commission's regulations.

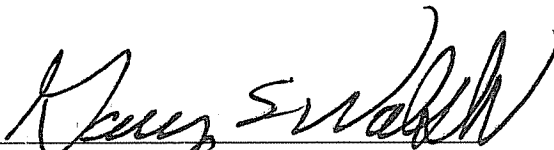
9. Ernest is directed to comply with all Commission regulations, unless a regulation is specifically waived by the Commission.

10. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA

Docket No. 2001-447-C

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Telecommunications Services in the State of)
South Carolina)
_____)

STIPULATION

The South Carolina Telephone Coalition ("SCTC") (see attachment "A" for list of companies) and Ernest Communications, Inc. ("Ernest Communications") hereby enter into the following stipulations. As a consequence of these stipulations and conditions, SCTC does not oppose Ernest Communications' Application. SCTC and Ernest Communications stipulate and agree as follows:

1. SCTC does not oppose the granting of a statewide Certificate of Public Convenience and Necessity to Ernest Communications, provided the South Carolina Public Service Commission ("Commission") makes the necessary findings to justify granting of such a certificate, and provided the conditions contained within this stipulation are met.
2. Ernest Communications stipulates and agrees that any Certificate which may be granted will authorize Ernest Communications to provide service only to customers located in non-rural local exchange company ("LEC") service areas of South Carolina, except as provided herein.
3. Ernest Communications stipulates that it is not asking the Commission to make a finding at this time regarding whether competition is in the public interest for rural areas.
4. Ernest Communications stipulates and agrees that it will not provide any local service, by its own facilities or otherwise, to any customer located in a rural incumbent LEC's service area,

unless and until Ernest Communications provides such rural incumbent LEC and the Commission with written notice of its intent to do so at least thirty (30) days prior to the date of the intended service. During such notice period, the rural incumbent LEC will have the opportunity to petition the Commission to exercise all rights afforded it under Federal and State law. Also, Ernest Communications acknowledges that the Commission may suspend the intended date for service in rural LEC territory for ninety (90) days while the Commission conducts any proceeding incident to the Petition or upon the Commission's own Motion, provided that the Commission can further suspend the implementation date upon showing of good cause.

5. Ernest Communications stipulates and agrees that, if Ernest Communications gives notice that it intends to serve a customer located in a rural incumbent LEC's service area, and either (a) the Commission receives a Petition from the rural incumbent LEC to exercise its rights under Federal or State law within such 30-day period, or (b) the Commission institutes a proceeding of its own, then Ernest Communications will not provide service to any customer located within the service area in question without prior and further Commission approval.

6. Ernest Communications acknowledges that any right which it may have or acquire to serve a rural telephone company service area in South Carolina is subject to the conditions contained herein, and to any future policies, procedures, and guidelines relevant to such proposed service which the Commission may implement, so long as such policies, procedures, and guidelines do not conflict with Federal or State law.

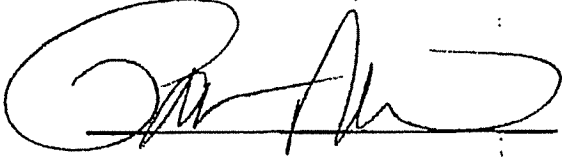
7. The parties stipulate and agree that all rights under Federal and State law are reserved to the rural incumbent LECs and Ernest Communications, and this Stipulation in no way suspends or adversely affects such rights, including any exemptions, suspensions, or modifications to which they may be entitled.

8. Ernest Communications agrees to abide by all State and Federal laws and to participate, to the extent it may be required to do so by the Commission, in the support of universally available telephone service at affordable rates.

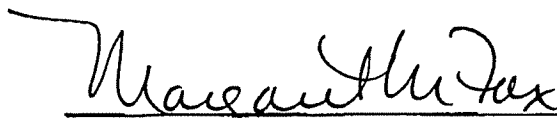
9. Ernest Communications hereby amends its application and its prefiled testimony in this docket to the extent necessary to conform with this Stipulation.

AGREED AND STIPULATED to this 14th day of January
2001.

Ernest Communications, Inc.:



South Carolina Telephone Coalition:



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Attorneys for the South Carolina Telephone
Coalition

ATTACHMENT A

South Carolina Telephone Coalition Member Companies for Purposes of Local Service Stipulation

ALLTEL South Carolina, Inc.
Chesnee Telephone Company
Chester Telephone Company
Farmers Telephone Cooperative, Inc.
Ft. Mill Telephone Company
Heath Springs Telephone Company Inc.
Home Telephone Company, Inc.
Lancaster Telephone Company
Lockhart Telephone Company
McClellanville Telephone Company
Norway Telephone Company
Palmetto Rural Telephone Cooperative, Inc.
Piedmont Rural Telephone Cooperative, Inc.
Pond Branch Telephone Company
Ridgeway Telephone Company
Rock Hill Telephone Company
Sandhill Telephone Cooperative, Inc.
St. Stephen Telephone Company
West Carolina Rural Telephone Cooperative, Inc.
Williston Telephone Company

BEFORE
THE PUBLIC SERVICE COMMISSION OF
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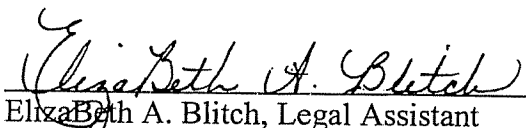
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_____)

**CERTIFICATE OF
SERVICE**

I, ElizaBeth A. Blitch, do hereby certify that I have this date served one (1) copy of the foregoing Stipulation upon the following party of record by causing said copy to be deposited with the United States Mail, first class postage prepaid to:

Valerie M. Furman, Esquire
Dickstein Shapiro Morin & Oshinsky LLP
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Washington, D.C. 20037


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January 15, 2002

Columbia, South Carolina